STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0791

State of Minnesota,
Respondent,

vs.

Gabriel Robert Kimbrough,
Appellant.

Filed April 28, 2014
Affirmed
Schellhas, Judge

Ramsey County District Court
File Nos. 62-CR-12-6701, 62-CR-12-6581

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Halbrooks, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

On direct appeal, appellant seeks to withdraw his plea of guilty to two counts of first-degree aggravated robbery on the ground that his plea was not voluntary. We affirm.

FACTS

In August 2012, respondent State of Minnesota charged appellant Gabriel Kimbrough in separate complaints with three counts of first-degree aggravated robbery. The state charged Kimbrough with two counts for an incident that occurred on June 27, 2012, and one count for an incident that occurred on August 4, 2012. The district court set bail at $70,000 with respect to the June incident and $50,000 with respect to the August incident. Kimbrough did not post bail. In January 2013, Kimbrough entered an *Alford* plea to the second count of aggravated robbery in connection with the incident on June 27, 2012, and to the sole count of aggravated robbery in connection with the incident on August 4, 2012. In accordance with Kimbrough's plea agreement, the district court sentenced Kimbrough to middle-of-the-box concurrent sentences of 48 and 58 months' imprisonment.

This appeal follows.

D E C I S I O N

Kimbrough argues that the circumstances of his case—his mental illness and mistreatment in jail—amounted to a level of coercion that rendered his plea involuntary.

A defendant may withdraw a guilty plea after he has been sentenced only to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice sufficient to permit a plea withdrawal exists when the guilty plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A plea is valid when it is accurate, intelligent, and voluntary. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "The voluntariness requirement insures that a guilty plea is not entered because of any 'improper pressures or

inducements.'" *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (quoting *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989)). To analyze the voluntariness requirement, "the court examines what the parties reasonably understood to be the terms of the plea agreement." *Raleigh*, 778 N.W.2d at 96. "[T]he government may not produce a plea through actual or threatened physical harm, or by mental coercion 'overbearing the will of the defendant.'" *State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994) (quoting *Brady v. United States*, 397 U.S. 742, 750, 90 S. Ct. 1463, 1470 (1970)). But "the normal trauma associated with being incarcerated . . . is not, by itself, a basis to claim coercion." *Sykes v. State*, 578 N.W.2d 807, 813 (Minn. App. 1998), *review denied* (Minn. July 16, 1998), *cert. denied*, 525 U.S. 1055 (1998). The burden of showing a plea was invalid rests on a defendant, *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998), and the court considers all relevant circumstances in determining whether a plea is voluntary, *Raleigh*, 778 N.W.2d at 96. Appellate courts review the validity of a guilty plea de novo. *Id.* at 94.

Kimbrough's Mental Health

In September 2012, Kimbrough moved the district court for a rule 20.01 examination and requested that Dr. Thomas Gratzer not perform the examination on the basis that Dr. Gratzer's examinations were "insufficiently thorough." The district court ordered a rule 20.01 examination but did not exclude Dr. Gratzer from performing the examination.[1] On October 22, 2012, Dr. Gratzer opined that Kimbrough was incompetent

[1] Kimbrough states in his brief that "[t]he court ordered the Rule 20.01 examination and *disqualified Dr. Gratzer from performing it*." (Emphasis added.) But the record before us directly contradicts Kimbrough's statement. The record reveals that the district court deemed the objection of Kimbrough's counsel to Dr. Gratzer to be an insufficient basis to

to stand trial because he exhibited signs of depressive disorder and psychotic disorder. After Dr. Gratzer issued his report, he reviewed jail recordings of Kimbrough's telephone calls to determine whether Kimbrough was lucid, and the district court authorized Dr. Gratzer to reexamine Kimbrough. On October 28, 2012, Dr. Gratzer opined that Kimbrough was competent to stand trial, noting that, with the benefit of medication, Kimbrough's clinical condition had improved to the point where he did not voice delusional beliefs or appear to be psychotic.

When Kimbrough learned of Dr. Gratzer's competency opinion, at a hearing on October 30, 2012, Kimbrough requested a 24-hour continuance in order to search for private counsel and consider objections to Dr. Gratzer's competency finding. The district court granted the request. But, the following morning, Kimbrough did not object to Dr. Gratzer's competency report, and the district court found Kimbrough competent to proceed to trial.

Alleged Mistreatment Suffered in Jail

On November 9, 2012, Kimbrough, through substitute counsel, moved the district court to change the conditions of his bail. In a written motion, Kimbrough's counsel stated that Kimbrough had "informed his attorney of several instances of abuse on a daily basis he has been the victim of, brought on by the correctional officers in the Ramsey County Law Enforcement Center." Counsel also stated that Kimbrough "has submitted a letter signed by 6 other inmates currently at the LEC who corroborate how Mr.

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disqualify Dr. Gratzer from performing the rule 20.01 examination and ordered that the examination "be assigned in the normal course of business to whoever is available." Kimbrough's misstatement in his brief concerns us.

Kimbrough is being treated." And counsel stated, "In addition, Mr. Kimbrough has applied for and has been accepted to the Salvation Army Volunteer Treatment Program, and the paperwork is included as well."[2] At the hearing, Kimbrough's counsel told the district court that the jail guards "constantly talk about [Kimbrough's] case. They tell him he's going away for a long time. They call him names. They're verbally abusive to him on a daily basis." Kimbrough's counsel acknowledged Kimbrough's difficult behavior when he was "first brought into custody at the Law Enforcement Center" but argued that Kimbrough had not had any behavioral incidents since he had substitute counsel. The state opposed Kimbrough's motion, based largely on an inmate report that detailed Kimbrough's inappropriate behavior towards staff and other inmates, including threats to kill other inmates and flooding his cell on multiple occasions. The district court denied Kimbrough's motion.

On December 3, 2012, Kimbrough again moved the district court to change the conditions of his bail. In a written motion, Kimbrough's counsel repeated the content of the first motion and added that Kimbrough had been "punished quite regularly in the Ramsey County Law Enforcement Center," graphically detailing the punishments and noting that two other inmates at the jail had called counsel to corroborate these incidents. The state opposed Kimbrough's motion, and the district court denied the motion.

[2] We note that The Salvation Army letter does *not* state that Kimbrough was "accepted" to the program. Rather, it states that Kimbrough was "eligible for entry" into the program and sets forth ten conditions that Kimbrough had to meet in order to be "admitted" to the program. This mischaracterization of Kimbrough's status with respect to The Salvation Army program continues in his brief to this court, and it is troubling.

Plea Agreement

Kimbrough directly appeals the district court's acceptance of his guilty plea. "[A] direct appeal is appropriate when the record contains factual support for the defendant's claim and when no disputes of material fact must be resolved to evaluate the claim on the merits." *State v. Anyanwu*, 681 N.W.2d 411, 413 n.1 (Minn. App. 2004).

Here, the record reflects that, on the morning of January 2, 2013, the state confirmed its plea offer on the record and stated that the offer would remain open pending the district court's decisions on pretrial motions. The district court placed the case on standby status. That afternoon, Kimbrough informed the district court that he wished to enter a plea. Kimbrough's counsel questioned him on the record about his understanding of the state's plea offer, and Kimbrough testified that he was able to understand the proceedings and was not under the influence of any substances that would impair his ability to understand what was happening. When Kimbrough's counsel asked him whether his plea had been coerced, Kimbrough replied that it had not. Kimbrough also agreed that he was not making "the claim that the fact [he] ha[d] been held in jail since [his] arrest and could not post bail caused [him] to decide to plead guilty in order to get the thing over with rather than waiting for [his] turn at trial."

After the state questioned Kimbrough about the factual basis for the plea, the district court set the date for sentencing and asked Kimbrough whether he had any questions. The following exchange then occurred between the district court and Kimbrough:

> THE DEFENDANT: I was wondering, can I just be sent to prison, please, as soon as possible? Because like I said before—
> THE DEFENDANT'S COUNSEL: Your Honor—
> THE DEFENDANT: —sir, they're mentally abusing me and antagonizing me every day. At least, I can get to prison and get my time served, is all I want. So that's what I want to ask. That's all I ask you. It means a lot.
> THE COURT: [Defendant's counsel]?
> THE DEFENDANT'S COUNSEL: Your Honor, my understanding is that we would be able to ask the Court for an interim commit for Mr. Kimbrough. I was informed by [the prosecutor], as well as your law clerk, just before Mr. Kimbrough came out, that Ramsey County apparently no longer does these interim commits.

The district court denied Kimbrough's request for an interim commitment to the department of corrections.

The record before us is insufficient to support Kimbrough's claim that he pleaded guilty due to coercion, i.e., to avoid remaining at the Ramsey County Law Enforcement Center. *See State v. Feather*, 288 Minn. 556, 557, 181 N.W.2d 478, 479–80 (1970) ("[T]he claims of defendant [arguing to withdraw a guilty plea] are unsupported by the record and cannot be viewed otherwise than as mere argumentative assertions, neither presented to nor considered by the trial court. Such unsupported assertions are wholly insufficient to overcome the presumption of regularity which attaches to a judgment submitted for review on direct appeal."). A direct appeal is not appropriate when the record does not contain factual support for a defendant's claim and when disputes of material fact are unresolved, rendering impossible an evaluation of the claim on the merits. *See Anyanwu*, 681 N.W.2d at 413 n.1.

Moreover, under oath at the plea hearing, Kimbrough reviewed the contents of his plea petition with his trial counsel. He testified that his mental-health conditions were not impeding his ability to understand the guilty-plea proceedings, and he agreed that, "other than the agreement that [he and his attorney had] talked about, there [had] been no promises or threats made to [him] other than the agreement." And Kimbrough asked the district court for an interim commitment to prison *after* he entered his plea. Nothing in the record supports Kimbrough's assertion that he pleaded guilty in order to be removed from the Ramsey County Law Enforcement Center.

We conclude that Kimbrough has failed to satisfy his burden of showing that his plea was not voluntary.

Affirmed.